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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,931	01/16/2004	Kenneth L. Goldberg	91155	6525

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EXAMINER

KING, ANITA M

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/758,931	Applicant(s) GOLDBERG, KENNETH L.	
	Examiner Anita M. King	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/26/04</u> . | 6) <input type="checkbox"/> Other: _____ |

This is the first office action for application number 10/758,931, Foldable Serving Tray Stand, filed on January 16, 2004.

Claim Objections

Claim 19 (which currently depends from claim 1) is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 11. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is an inconsistency in claim 11, it is uncertain whether the citation of "service items" is intended to be an element of the claimed invention. In claim 11, it appears that the "service items" is a subcombination of the claimed invention, however, claim 12 further limits the service items and thus, it is not certain if the limitation is intended to be a combination or subcombination of the claimed invention.

Applicant is required to clarify what the claims are intended to be drawn to, i.e., either the serving tray stand alone or the combination of the service tray stand and the service items. Applicant should make the language of the claim consistent with applicant's intent. In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the subcombination and the claims will be rejected accordingly. If applicant indicates by amendment that the combination claim is the intention, the language in the preamble should be made consistent with the language in the body of the claims. If the intent is to claim the subcombination, then the body of the claims must be amended to remove positive recitation of the combination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-8, 11-13, 15, 16, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 2,802,578 to Barile. Barile discloses a serving tray stand comprising: first and second U-shaped frames (10, 12), each frame having first and second spaced parallel legs (10a, 12a) connected by a transverse portion; the frame pivotably coupled at a pivot point (@20) located on a common axis directed through each leg; a first cross bar (42) attached to the legs of the first U-shaped frame below the pivot point; a second cross bar (44) attached to the legs of the second U-

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shaped frame below the pivot point; at least one restraining member (26) coupled between the first and second cross bars configured to prevent pivoting movement (Col. 2, line 47ff) of the frames away from each other by greater than a predetermined amount; wherein the first and second -shaped frames are substantially the same size, and are coupled to each other at the pivot point in an offset manner; wherein a distance between the parallel legs of the first and second U-shaped frames is not equal, such that one of the first and second frames is pivotably coupled at a location inside the other of the first and second frames; wherein each of the legs includes a foot member (14); wherein the transverse portions of the first and second U-shaped frames include at least one bumper (46) configured to provide a frictional surface; wherein the at least one bumper is made of rubber; wherein the transverse portions of the first and second U-shaped frames include at least two bumpers spaced from each other; wherein the cross bars and the at least one restraining member are configured to hold service items; and wherein the legs are integrally formed with the transverse portion.

Claims 1-4, 9, 11, 12, 15-17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,646,802 to Basore et al., hereinafter, Basore. Basore discloses a stand (10) comprising: first and second U-shaped frames (40, 42), each frame having first and second spaced parallel legs connected by a transverse portion (60, 62); the frames pivotably coupled at a pivot point; first and second cross bars (68) attached to the legs of the U-shaped frames below the pivot point; at least one restraining member (70, 72) coupled between the first and second cross bars; wherein the first and second U-shaped frames are made of wood (Col. 5, line 67ff); wherein the

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strap is made of a specific material; and wherein the at least one restraining member is configured to hold service items.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 9-13, and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,542,359 to Polries in view of Basore. Polries discloses a serving tray stand (80) comprising: first and second U-shaped frames (84, 86), each frame having first and second spaced parallel legs connected by a transverse portion; the frame pivotably coupled at a pivot point (88) located on a common axis directed through each leg; a first cross bar (92) attached to the legs of the first U-shaped frame below the pivot point; a second cross bar (90) attached to the legs of the second U-shaped frame below the pivot point; wherein the first and second -shaped frames are substantially the same size, and are coupled to each other at the pivot point in an offset manner; wherein a distance between the parallel legs of the first and second U-shaped frames is not equal, such that one of the first and second frames is pivotably coupled at a location inside the other of the first and second frames; and wherein the legs are integrally formed with the transverse portion.

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Polries discloses the claimed invention except for the limitations of at least one restraining member coupled between the first and second cross bars and the U-shaped frames being constructed of a material selected from the group consisting of metal, wood, or plastic. Basore teaches a stand having first and second U-shaped frames (40, 42), each frame having first and second spaced parallel legs connected by a transverse portion (60, 62), the frames pivotably coupled at a pivot point, first and second cross bars (68) attached to the legs of the U-shaped frames below the pivot point, at least one restraining member (70, 72) coupled between the first and second cross bars, wherein the strap is made of a specific material, and wherein the at least one restraining member is configured to hold service items. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the stand in Polries to have included the restraining member as taught by Basore for the purpose of providing a means for limiting the outward movement of the frames when in the open-most position. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the strap in Basore to have been constructed of webbed or fabric material for the purpose of providing a suitability material for the intended use of the strap.

Claims 1-3, 6-12, 14, and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,213,828 to Thomas in view of Basore. Thomas discloses a serving tray stand comprising: first and second U-shaped frames, each frame having first and second spaced parallel legs (10, 11) connected by a transverse portion (13, 14); the frame pivotably coupled at a pivot point (12) located on a common

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axis directed through each leg; wherein the first and second -shaped frames are substantially the same size, and are coupled to each other at the pivot point in an offset manner; wherein a distance between the parallel legs of the first and second U-shaped frames is not equal, such that one of the first and second frames is pivotably coupled at a location inside the other of the first and second frames; wherein the transverse portions of the first and second U-shaped frames include at least one bumper (15); wherein the at least one bumper is made of rubber; wherein the frames include at least two bumpers spaced from each other; and wherein the legs are connected to the upper transverse portion by a fastener.

Thomas discloses the claimed invention except for the limitations of first and second cross bars, at least one restraining member coupled between the first and second cross bars, and the legs being connected to the transverse portion by a chemical adhesive.

Basore teaches a stand having first and second U-shaped frames (40, 42), each frame having first and second spaced parallel legs connected by a transverse portion (60, 62), the frames pivotably coupled at a pivot point, first and second cross bars (68) attached to the legs of the U-shaped frames below the pivot point, at least one restraining member (70, 72) coupled between the first and second cross bars, wherein the strap is made of a specific material, and wherein the at least one restraining member is configured to hold service items. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the stand in Thomas to have included the first and second cross bars and the restraining member as taught

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by Basore for the purpose of providing a means for reinforcing the stand and a means for limiting the outward movement of the frames when in the open-most position. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the strap in Basore to have been constructed of webbed or fabric material for the purpose of providing a suitability material for the intended use of the strap.

Since it appears that the transverse portion and the legs in Thomas are attached by some type of fastener considering the cross hatch of the material shown for the transverse portion is metal or wood, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used a mechanical fastener or adhesive as an alternative mechanically equivalent means for attaching the transverse portions to the leg.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barile. Barile discloses the claimed invention except for the limitation of the U-shaped frames being made of a material selected from the group consisting of metal, wood, and plastic. Barile teaches that the stand is made of tubular material which is generally known in the art to be either metal or plastic and thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have constructed the frames in Barile to have been made of either a metal or plastic material based on the materials suitability for the intended use.

Claims 10 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Basore. Basore discloses the claimed invention except for the limitation of the

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strap being constructed of a material selected from the group consisting of webbed material, fabric strap, and metal or plastic chain. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the strap in Basore to have been constructed of webbed or fabric material for the purpose of providing a suitability material for the intended use of the strap.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 1,412,314 to Pandolfo

U.S. Patent 2,014,904 to Martin

U.S. Patent 2,044,517 to Thomas

U.S. Patent 3,157,136 to Moody

U.S. Patent 3,166,028 to Zagel

U.S. Patent 4,122,780 to Brickman

U.S. Patent 5,509,360 to Chiu

U.S. Patent 6,314,893 to Lee

U.S. Patent 6,722,618 to Wu


U.S. Patent 6,817,445 to Slemmer

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anita M. King
Primary Examiner
Art Unit 3632

February 8, 2006